

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JANUARY 14, 2005**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on January 14, 2005. The meeting was tape-recorded and the tape is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commission Member Mike Joyner were present at the meeting. Commission Member Ricky Wright was unable to attend; however, he participated by telephone conference as needed.

MINUTES OF DECEMBER 10, 2004 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the December 10, 2004 meeting into the record. Seconded by Commissioner Joyner. So ordered. Chairman Fox made a motion to approve the minutes from the December 10, 2004 meeting. Seconded by Commissioner Joyner. So ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Joyner if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Joyner stated that he found no apparent conflicts of interest. Commissioner Fox recused himself from hearing the following cases:

Hearing Case #11 – Express Way
Hearing Case #13 – Food Lion 1193
Hearing Case #30 – Coat of Arms Lounge
Hearing Case #48 – Buffaloes Grocery
Hearing Case #59 – Palm Room
Hearing Case #66 – Lucky's
First Offense Case #8 – Prima
First Offense Case #30 – Kangaroo Express 444
First Offense Case #31 – Kangaroo Express 450
First Offense Case #37 – Wilco 391
First Offense Case #38 – Gas Center 4

I. HEARING CASES- 73 Listed

Chief Deputy Counsel Fred A. Gregory presented information to the Commission pertaining to Hearing Case #1 – Boom Boom Room Night Club. The permittee was cited for being open to

the general public under a Mixed Beverage Private Club permit. The case was heard before Administrative Law Judge Sammie Chess, Jr. on September 30, 2004 in the Office of Administrative Hearings in High Point, North Carolina. Assistant Counsel K. Renee Cowick represented the ABC Commission. The permittee did not appear at the hearing. Judge Chess' decision recommended a penalty of two days suspension of the permittee's ABC permits and a fine of \$500.00. Mr. Gregory recommended the Commission accept Judge Chess' decision. Chairman Fox made a motion to adopt Judge Chess' decision. Seconded by Commissioner Joyner. So ordered.

Mr. Gregory stated that six permittees were present to provide information regarding their cases:

Hearing Case #58- Wilco 241- Attorney Ed Turlington was present, along with WilcoHess Regional Manager Tom Simmons, to speak on behalf of Wilco 241 pertaining to a charge of an employee allowing violations of the controlled substances statutes to occur on the licensed premises. Mr. Turlington asked the Commission to consider the swift action taken by WilcoHess when the matter of store manager Robert Moretz's suspicious behavior was discovered in mid-December of 2003, and that as a result of this quick action, the clerk was arrested for selling narcotics at the store in late December of 2003.

Chairman Fox asked if the outcome of Mr. Moretz's criminal case was known. Assistant Counsel LoRita K. Pinnix stated that Mr. Moretz was convicted, but had not been sentenced to jail time. Mr. Turlington stated that Mr. Moretz was discharged immediately following the violation. Commissioner Joyner asked if this was the first indication that Mr. Moretz had been selling drugs on the licensed premises, and Mr. Turlington replied that it was. Ms. Pinnix stated that the Wilco officials and ALE officers involved were surprised at this violation.

Ms. Pinnix recommended that the Offer in Compromise be accepted. Commissioner Joyner asked Mr. Turlington if WilcoHess would be willing to accept the offer, and Mr. Turlington replied that they would. Chairman Fox made a motion to accept the Offer in Compromise. Seconded by Commissioner Joyner. So ordered.

Hearing Case #65- Currituck Sports Two – Permittee Cybil O'Neal and employee Alice Balance were present to address the Commission concerning their case. Mrs. O'Neal stated that Mrs. Balance had mistakenly sold an alcoholic beverage to a minor who was working with ALE officers, but immediately realized her mistake and tried to get the alcoholic beverage back. The minor had already made contact with the supervising officer, however, who told Mrs. Balance to go back into the store, and that an officer would arrive to issue the citation.

Mrs. O'Neal asked that the penalty in her case be reconsidered, in light of the fact that Mrs. Balance had tried to rectify her mistake, and considering that this was her establishment's first violation.

Commissioner Joyner asked for clarification regarding Mrs. Balance's realization that the sale had been in error. Mrs. Balance replied that she had misinterpreted the date of birth on the minor's identification. Upon realizing her mistake, she exited the store, knocked on the door of

the car the minor was in and asked to see her identification again. At this time, the ALE officer told her to go back into the store.

Chairman Fox asked Mr. Gregory for his recommendation in the case. Mr. Gregory stated that when speaking with the officers involved in this violation, they had stated that Mrs. Balance had tried to rectify the mistaken sale.

Chairman Fox asked how many employees Mrs. O'Neal had at Currituck Sports Two. Mrs. O'Neal replied that she had three employees. Chairman Fox asked when the last time Mrs. O'Neal's employees had attended an ABC training seminar, and Mrs. O'Neal replied that she conducts her own meetings once a month. Chairman Fox moved that the penalty for this case be suspended on the condition that Mrs. O'Neal host an official ABC class within the next thirty days. Seconded by Commissioner Joyner. So ordered.

First Offense Case #26 – Sutton's Park Place – Permittee Vickie Sutton was present to speak to the Commission regarding her case. Mrs. Sutton explained that her employees had attended an ABC class in Reidsville, North Carolina a week prior to her store's violation, and that she had printed guidelines for selling alcoholic beverages and posted them at the register. In light of these facts, she felt that she had done all she could to prevent the sale from occurring. The employee involved was terminated immediately following the violation, and Mrs. Sutton had made changes to her registers so that a birth date would be required for all alcoholic beverage purchases. Mrs. Sutton asked that some consideration be given to altering her penalty based on her efforts.

Chairman Fox stated that he would be willing to reduce Mrs. Sutton's fine to \$500.00 on the condition that she host an ABC class within the next thirty days. Seconded by Commissioner Joyner. So ordered.

Hearing Case #16 – K's Korner Stop – Permittee Kathy Kirkley was present to speak to the Commission regarding her case. She stated that she had only recently acquired sole ownership of K's Korner Stop, and that she had a cash register installed that requires a birth date to be entered before an alcoholic beverage sale could be completed. On the date of the violation, however, her clerk had bypassed the birth date entry to sell the beverage to the minor. She further stated that she frequently sends her employees to ABC training sessions in her area, and based on her efforts to prevent this violation, she asked the Commission to reconsider her penalty.

Commissioner Joyner asked Ms. Kirkley for clarification regarding her business' history. Ms. Kirkley stated that she had owned and operated the business jointly with her ex-husband for 22 years, and that she had bought the business from him four years ago. Commissioner Joyner asked what Ms. Kirkley had done since the violation occurred to ensure such a violation does not occur again in the future, and Ms. Kirkley stated that she had spoken with ALE Agent Patrick Preslar, who provides training approximately twice a year, and in the meantime she stressed the importance of checking identification when selling alcoholic beverages while training new employees. She stated that the clerk who had made the sale had focused mainly on the month and the day since it was the same as one of her children's birthdates.

Chairman Fox asked how many employees Ms. Kirkley employed at her store, and she replied that she had four clerks. Chairman Fox asked what her hours of operation were, and she replied from 6:00 AM to midnight.

Chairman Fox asked Ms. Cowick for information regarding the case. Ms. Cowick stated that from 1990 until December of 2003, the store operated without a violation, but from December of 2003, they received two violations in rapid succession.

Chairman Fox made a motion that the fine be reduced from \$2,000.00 to \$1,000.00 on the condition that Ms. Host an ABC training session within thirty days. Seconded by Commissioner Joyner. So ordered.

Hearing Case #8 – Mike’s Knightdale Amoco – Permittee Mike Whalen was present to speak to the Commission regarding his case. Mr. Whalen stated that Marquerite Jackson had not been convicted in criminal court of selling alcoholic beverages to a minor in this case, and he could not understand why he would be fined if there had been no criminal conviction. Since Ms. Jackson had not received a conviction, she was not terminated and therefore was still on Mr. Whalen’s payroll. He stated that the registers did require a birth date to be entered for all alcoholic beverage sales, but that Ms. Jackson had bypassed it to sell to a minor in this incident.

Commissioner Joyner asked Mr. Whalen whether he believed an equipment malfunction was to blame for the sale, and Mr. Whalen stated that he did not think this was the case. Mr. Whalen stated that he did believe a minor had purchased alcoholic beverages at his business, and that he did believe Ms. Jackson did not do her job properly.

Mr. Whalen further stated that since fines for tobacco sales were the responsibility of the employee, that he believed employees were much more conscious of selling tobacco to underage customers than selling alcoholic beverages to underage customers. Mr. Whalen stated that he did not feel he could do any more to prevent these violations from occurring.

Chairman Fox asked Mr. Gregory for information regarding the case. Mr. Gregory stated that Mr. Whalen had made a good faith effort to prevent underage sale violations from occurring, and that he did not expect for Ms. Jackson to be convicted in this case.

Chairman Fox made a motion to reduce the fine from \$2,000.00 to \$1,000.00 on the condition that Mr. Whalen host an ABC training session within thirty days. Seconded by Commissioner Joyner. So ordered.

Chairman Fox made a motion to accept the balance of the Offers in Compromise with the exception of Hearing Cases #11, 13, 30, 48, 59 and 66. Seconded by Commissioner Joyner. So ordered.

Hearing Case #63 – Meek’s Grocery – Acting General Counsel Timothy W. Morse spoke to the Commission regarding this case. Permittee Helen Meeks had requested that Mr. Morse present facts to the Commission concerning a charge of possession of spirituous liquor on her licensed

premises without authorization on October 1, 2004. Mr. Morse stated that the spirituous liquor belonged to Mrs. Meeks' son, who was storing it at the business after his living quarters had been flooded. Mr. Morse stated that the violation report supported this statement by indicating that the bottles were covered with dust.

Mr. Morse also stated that the location had been cited for a similar violation in 1991 when her son stored decorative decanters on the licensed premises.

Chairman Fox asked Mr. Morse if he had any recommendations concerning Mrs. Meeks' penalty. Mr. Morse stated that the penalty on the Offer in Compromise is the standard penalty for this violation, but due to the apparent facts that she was not selling the spirituous liquor, he felt the penalty could be mitigated. Commissioner Joyner asked why Mrs. Meeks could not attend the meeting herself, and Mr. Morse replied that Mrs. Meeks felt she could not leave the business.

Commissioner Joyner made a motion to waive the penalty for Meek's Grocery. Seconded by Chairman Fox. So ordered.

Commission Member Ricky Wright was contacted by telephone conference call to provide a second for Commissioner Joyner's motion to approve the Offers in Compromise for Hearing Cases #11, 13, 30, 59 and 66. So ordered.

Hearing Cases #8, 16 and 65 were to be continued until the February 11, 2004 hearing to provide time for the permittees to arrange and conduct ABC classes. In addition, Mr. Gregory requested that Hearing Case #48 – Buffaloe's Grocery be continued to the February 11, 2004 meeting. Chairman Fox moved to continue this case. Seconded by Commissioner Joyner. So ordered.

II. FIRST OFFENSE CASES – 41 listed

The following is a list of first offense violation cases, in which Final Agency Decisions were signed by the Chairman on January 11, 2005, pursuant to the Commission's authorizing resolution dated November 8, 2002:

Blanchards Texaco - 5721 Carmel Road, Charlotte, NC 28226
Citgo Quik Mart - Hwy 168, Moyock, NC 27958
Circle K Store 5102 - 9101 Sam Furr Road, Huntersville, NC 28078
Southland Trade - 141 Caratoke Hwy, Moyock, NC 27958
Times Turn Around Food Store 25 - 825 South New Hope Road, Gastonia, NC 28054
Kingsway 3 - 1010 South New Hope Road, Gastonia, NC 28052
Kangaroo Express 3034 - 5201 Raeford Road at Sandalwood Road, Fayetteville, NC 28304
Prima - 35 North Front Street, Wilmington, NC 28401
Trawick Convenience Store - 2816-106 Trawick Road, Raleigh, NC 27604
Laurel Market - 114 Cherokee Road, Charlotte, NC 28207
Gunters Country Store - 2328 Sandy Springs Road, Harmony, NC 28634
Lloyds II - 110 Hwy 86 North, Hillsborough, NC 27278
Lawndale Family Fare 327 - 2712 Lawndale Drive, Greensboro, NC 27408

Times Turn Around Food Store 39 - 6751 Wilkinson Boulevard, Belmont, NC 28120
Morris Marina Kabin Kamps & Ferry Service - 1000 Morris Marina Road, Atlantic, NC 28511
Metro Express Market and Grill - 2500 Erwin Road, Durham, NC 27705
Lloyds II - 110 Hwy 86 North, Hillsborough, NC 27278
Gunters Country Store - 2328 Sandy Springs Road, Harmony, NC 28634
Applebees Neighborhood Grill and Bar 03 - 433 Earl Road, Shelby, NC 28150
Happys Pool Room - 517 Cotanche Street, Greenville, NC 27834
Lowes Foods 195 - 1405 West Williams Street - Suite A, Apex, NC 27502
Pelican - 43 Camden Causeway, Elizabeth City, NC 27909
Gas Up - 405 Haywood Road, Asheville, NC 28806
Spinx 310 - 2001 North Queen Street, Kinston, NC 28501
Italian Pizzeria - 3807 Guess Road, Durham, NC 27705
Suttons Park Place - 1698 Hwy 29 Business, Reidsville, NC 27320
Talberts M Mart - 225 Mount Willing Road, Efland, NC 27243
Mallard Food Shops 15 - 1020 West New Bern Road, Kinston, NC 28501
Trading Post Groceries - 3420 New Leicester Hwy, Leicester, NC 28748
Kangaroo Express 444 - 3053 Castle Hayne Road, Wilmington, NC 28401
Kangaroo Express 450 - 2400 North College Road, Wilmington, NC 28405
Q A Express Mart - 5632 Farm Pond Lane, Charlotte, NC 28212
Churchills Restaurant - 108 East Meeting Street, Morganton, NC 28655
Millers Cash and Carry - 5268 St Pauls Road, Lumber Bridge, NC 28357
Harris Teeter Supermarket 218 - 4101 Park Road, Charlotte, NC 28209
Harris Teeter 257 - 2080 Kildare Farm Road, Cary, NC 27511
Wilco 391 - 7413 Market Street, Wilmington, NC 28405
Gas Center 4 - 421 Castle Hayne Road, Wilmington, NC 28401
White's Shopping Center - Highway 64 and 264, Manns Harbor, NC 27953
Happy Store 105 - 6700 Ward Boulevard, Wilson, NC 27893
Leicester General Store - 3149 New Leicester Hwy, Leicester, NC 28748

Chairman Fox made a motion to adopt the Offers in Compromise for the First Offense cases with the exception of First Offense Cases #8, 30, 31, 37 and 38. Seconded by Commissioner Joyner. So ordered.

Commission Member Ricky Wright was contacted by telephone conference call to provide a second for Commissioner Joyner's motion to approve the Offers in Compromise for First Offense Cases #8, 30, 31, 37 and 38. So ordered.

III. ABC STORE LOCATION – CARTERET COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the relocation of an ABC store in Morehead City, North Carolina. On November 9, 2004, the ABC Commission received a letter from Carteret County ABC Board administrator Bob Shipp requesting Commission approval to relocate the Parkwood Shopping Center ABC store. On November 10, 2004, the ABC Commission requested that ALE perform an investigation of the proposed location, and on November 16, 2004, ALE Agent A.G. Proctor conducted the investigation.

The Carteret County ABC Board plans to relocate the Parkwood Shopping Center ABC Store in Morehead City, North Carolina to a larger facility in the same shopping center. The new location will be approximately 3,700 square feet, more than double the current store's space. The property is currently owned by Parkwood Shopping Center LLC, and the lease price is \$7.38 per square foot for a yearly lease of \$42,000. The investigation found no apparent conflicts of interest between the property owners and the Carteret County ABC Board.

The nearest church is the Parkwood Baptist Church, located .3 miles from the proposed location. The nearest school is the West Carteret High School, located 1.1 miles from the proposed location. Pursuant to ABC Commission regulations, a notice of intent was properly posted on November 18, 2004, and to date no objections to the store's opening has been received. Mr. Herring recommended that the ABC Commission approve the proposed relocation.

Commissioner Joyner made a motion to approve the proposed relocation. Seconded by Chairman Fox. So ordered.

VI. OTHER BUSINESS

Mr. Herring presented to the Commission an Administrative Services Agreement between the Gastonia ABC Board and the Mount Holly ABC Board. The Commission approved the opening of a Mount Holly ABC store over a year ago, and at that time the Gastonia ABC Board began negotiations with the Mount Holly ABC Board to merge and operate as one system. During the summer of 2004, however, those negotiations broke down and the Mount Holly City Council decided to appoint an ABC Board and operate an independent system. The Mount Holly ABC Board entered into an Administrative Services Agreement with the Gastonia ABC Board to more efficiently run their operation. Under the terms of the agreement, Mount Holly ABC Board operates as an independent system with hiring and firing control over their employees, conducting their own meetings, and operating their own ABC store. The Gastonia ABC Board will provide accounting and administrative support for the Mount Holly ABC Board. Mr. Herring recommended that the ABC Commission approve this Administrative Services Agreement.

Chairman Fox asked if the boards had a projected sales figure under the agreement, and Mr. Herring stated that projected sales were over a million dollars for the new Mount Holly ABC store, and have included in the agreement a pay scale for Gastonia's services that will be adjusted upward as sales at the Mount Holly ABC store increase. Commissioner Joyner asked if the Mount Holly ABC store would be sharing warehouse inventory with the Gastonia ABC Board, and Mr. Herring stated that in some cases they would, but most of the Mount Holly ABC store's shipments would come from the Raleigh warehouse.

Commissioner Joyner made a motion to approve the proposed Administrative Services Agreement. Seconded by Chairman Fox. So ordered.

Mr. Herring also presented a list of proposed April, May and June Commission Meeting dates to the Commission. These dates were set as April 8, 2005, May 6, 2005 and June 3, 2005. Commissioner Joyner made a motion to accept the dates. Seconded by Chairman Fox. So ordered.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Jason Hall, Legal Division